APPENDIX A

Statutes Involved

Interstate Commerce Act, § 1(18)-(20), 41 Stat. 477-478 (1920), as amended, 49 U.S.C. § 1(18)-(20):

(18). *Extension or abandonment of lines; certificate required; contracts for joint use of spurs, switches, etc.* No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. Nothing in this paragraph or in section 5 of this title shall be considered to prohibit the making of contracts between carriers by railroad subject to this chapter, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

(19). *Application for certificate of Commission; notice and hearing.* The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this chapter shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof

to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

(20). *Issuance of certificate by Commission; unlawful extension or abandonment of lines.* The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000

or by imprisonment for not more than three years, or both.

Interstate Commerce Act, § 1(22), 41 Stat. 478 (1920), 49 U.S.C. § 1(22):

(22). *Construction, etc., of spurs, switches, etc., within State.* The authority of the Commission conferred by paragraphs (18) to (21) of this section, both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

Interstate Commerce Act, § 5(2), 48 Stat. 217 (1933), as amended, 49 U.S.C. § 5(2):

(2). *Unifications, mergers, and acquisitions of control.* (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage

rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subdivision (a) of this paragraph, the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305(e) of this title), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: Provided, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6) of this section, is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage

in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction, under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

* * * * * * *

(f) As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Interstate Commerce Act, §5(4), 48 Stat. 218 (1933), as amended, 49 U.S.C. §5(4):

(4) *Control effected by other than prescribed methods.* It shall be unlawful for any person, except as provided in paragraph (2) of this section, to enter into any transaction within the scope of subdivision (a) of paragraph (2) of this section, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5) of this section, the words "control or management" shall be construed to include the power to exercise control or management.

Interstate Commerce Act, §5(8), 48 Stat. 219 (1933), as amended, 49 U.S.C. §5(8):

(8). *Jurisdiction of injunctions, etc., against violations of section or orders.* The district courts of the United States shall have jurisdiction upon the complaint of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

APPENDIX B

Memorandum Decision of the United States District Court for the Western District of Tennessee

This is an action filed by the Interstate Commerce Commission (I. C. C.) against several railroads and a railroad passenger terminal operating company seeking an injunction requiring three of these railroads to continue to use this abandoned terminal and to cease using certain other passenger terminals. The City of Memphis (City) and the Railway Labor Executives' Association (Labor Association) have intervened as additional plaintiffs.

Plaintiffs rely on 49 U. S. C., § 1 (18) which, in general, requires a certificate of public convenience and necessity before a line of railroad may be abandoned. They also rely on § 5 (2) and § 5 (4) which provide, in general, that I. C. C. approval must be obtained before trackage rights on a line of railroad may be acquired.

For jurisdiction, plaintiffs rely on § 1 (20), which authorizes the issuance of an injunction to prohibit an abandonment contrary to the provisions of § 1 (18), and rely on § 5 (8), which authorizes the issuance of an injunction to prohibit an acquisition of trackage rights contrary to the provisions of § 5 (2) and § 5 (4).

Plaintiffs seek both a temporary and a permanent injunction, and a hearing on the application for a temporary injunction has been had. At this hearing, defendants took the position that I. C. C. approval of what has been done was not necessary and that, in any event, a temporary injunction should not issue in this action.

The affidavits which have been filed and the evidence introduced at the hearing establish the relevant facts without dispute.

The defendant Memphis Union Station Company (Union Station), which owns and has operated this passenger terminal in the City, was formed in 1909, its stock being owned by the defendant Louisville & Nashville Railroad Company (L & N), the defendant Southern Railway Com-

pany (Southern), the defendant Missouri Pacific Railroad Co. (Mo Pac), and the defendant St. Louis Southwestern Railway Co., which has been referred to in the record and which will be referred to herein as the "Cotton Belt". The terminal building, tracks and other facilities were completed in 1912. Thereafter these railroads, as tenants of their subsidiary terminal company, had used this passenger terminal down to around April 1, 1964, except that the Cotton Belt ceased operating passenger trains into the City in 1952.

The Union Station fronts on Calhoun Avenue to the north and stub-end terminal tracks, which Union Station used for receiving and discharging passengers and mail, for cleaning and minor repairs to passenger trains, and for switching and making up of passenger trains, are immediately to the south of the terminal building. There are about twelve of these tracks, all of which run north and south, each with a platform and overhanging shed. Immediately to the east of and parallel to these tracks is another series of tracks used for storage of cars and heavier repairs.

Passenger trains using the Union Station approach on a group of main line east-west tracks immediately to the south of the terminal property, running perpendicular to the terminal tracks. The Southern and L & N passenger trains, which enter the City from the east, run to the west of the Union Station on their main line tracks and then back into the station. The defendant Union Railway Co., a wholly owned "belt-line" subsidiary of Mo Pac, owns two of these east-west main line tracks. Mo Pac trains, which enter the City from the west, run to the east of the station on one of these Union Railway tracks and then back into the station.

These main line east-west tracks to the south of the Union Station terminal are joined with the stub-end terminal tracks by two sets of lead tracks which are, looking from the south, arranged in an inverted Y. This arrangement enabled Southern and L & N trains to back in from the west over the west branch of the Y and to depart over the east branch and enabled Mo Pac trains to back in from

the east over the east branch of the Y and to depart over the west branch.

To handle trains passing the Union Station on these main line tracks and to handle passenger trains backing in and departing from the station, an interlock system is used. Simply stated, the interlock is a system of centrally controlled switches and signals. These switches and signals are located on these east-west main line tracks and also on the tracks on the terminal property. To illustrate how the interlock is used, a Southern passenger train approaching from the east enters the interlock area, continues to the west until its rear car is clear of the interlock switches, then a series of switches is thrown and signals are set so that the train may be backed across other main line tracks into the west branch of the Y lead tracks and then into the appropriate terminal stub-end track.

The interlock switches are electro-pneumatically controlled from a tower which has been owned and operated by the Union Station and receives its electricity and air from a power plant also owned and operated by the terminal company.

Subsequent to January 1, 1964, the I. C. C. received letters from employees of Union Station, advising that Southern, L & N and Mo Pac planned to terminate operations and their employment there effective April 1, 1964. Accordingly, on February 27, 1964, the I. C. C. directed letters to each of these defendant railroads, inquiring as to their intentions.

Thereafter, in an exchange of letters, Mo Pac advised the I. C. C. that the lease of the tenant lines at Union Station would expire on April 1, that Mo Pac intended to use passenger terminal facilities of its subsidiary Union Railway, and that in its opinion approval of this move by the I. C. C. was not necessary. L & N advised the I. C. C. that it likewise intended to end operations at Union Station with the expiration of the lease, which, in its opinion, did not require I. C. C. approval, and that it intended to use the terminal facilities of the defendant Illinois Central Railroad Co. (Illinois Central). Southern did not respond

in writing to the I. C. C. initial inquiry or other correspondence, but counsel for Southern advised I. C. C. verbally that if Mo Pac and L & N terminated operations at Union Station, it would do the same and would make use of other terminal facilities.

The I. C. C. advised Mo Pac, Southern and L & N that in its informal opinion approval was necessary and invited them to apply for approval and to make a contemporaneous motion to dismiss the application for lack of jurisdiction.

By copies of this correspondence sent to them, Union Station, Union Railway, Cotton Belt and Illinois Central were informed of the position of the I. C. C. and of the Southern, L & N and Mo Pac. Cotton Belt advised the I. C. C. that it was not involved in the controversy because it had not operated passenger trains into the City since 1952 and was only a stockholder of Union Station.

Thereafter, on or about April 1, 1964, Southern, Mo Pac and L & N terminated operations at Union Station.

Southern began using, as a passenger terminal, a building and adjoining tracks which it had last used for that purpose over fifty years ago but which it has been using and is still using as a freight depot. This building is 1.8 miles from Union Station. Mo Pac began routing its passenger trains over tracks to a building which it had existing rights to use through its subsidiary Union Railway. This building has not been used as a passenger terminal in over fifty years. It is likewise located on Calhoun Avenue and about four blocks west of Union Station. L & N began using the terminal facilities of Illinois Central, which are comparable to those of Union Station. For many years these facilities and Union Station have been the only passenger terminal facilities in use in the City. The Illinois Central terminal is likewise located on Calhoun Avenue (about two blocks west of Union Station), and its terminal stub-end tracks also come in from the south and are connected with these same east-west main line tracks. To enter the terminal, L & N trains, approaching from the east on its main line, run past Union Station and continue on its main line to a point west of the Illinois Central terminal. Then the trains are backed, using a

system of switches, off the main line and onto the appropriate stub-end track in the terminal. To accomplish this change of terminals, the only trackage rights necessary for L & N to acquire were rights over a lead track from its main line to the stub-end terminal tracks and rights to use the stub-end tracks.

Shortly after the termination of operations at Union Station, 120 of its employees were discharged, of whom about 75 have not obtained other employment. It is in behalf of these discharged employees that the Labor Association has intervened.

On March 25, the Tennessee Public Service Commission (Commission) issued an order to Southern, L & N, Mo Pac Cotton Belt and Union Station to show cause why their intended cessation of the use of the Union Station terminal would not constitute a violation of Tennessee statutes and the rules of the Commission. On April 3, a hearing was had on the show cause order and on April 7 the Commission ordered restoration of service at the terminal by April 12. By proper appellate proceedings in the state Chancery Court, this order was reviewed and on April 13 and 14 that Court held (for various reasons) that the order of the Commission was invalid as to Mo Pac, Cotton Belt and Union Station, but it affirmed the order of the Commission as to L & N and Southern. On April 14, the Commission held Southern and L & N in contempt for failure to comply with its order. On April 27, a justice of the Tennessee Supreme Court granted the application of Southern and L & N for certiorari and supersedeas. L & N (and perhaps Southern) have applied to the Commission for approval of what they have done, but the Commission has deferred the hearing thereon, pending decision of this action in this court. The Commission has sought review in the Tennessee Supreme Court of the action of the Chancery Court in holding that its order is invalid as to Mo Pac, Cotton Belt and Union Station.

As indicated, the two broad issues presented for consideration at the hearing are: (1) whether I. C. C. approval was necessary before L & N, Mo Pac and Southern could cease passenger operations at Union Station and institute

service at other locations as they have done; and (2) whether, in any event, a preliminary injunction should issue.

Necessity of I. C. C. Approval

As also stated, plaintiffs rely on 49 U. S. C., § 1 (18), which requires I. C. C. approval before a line of railroad may be abandoned and § 5 (2) and § 5 (4), which require such approval before trackage rights over or joint use of a railroad line and terminals incidental thereto may be acquired. Applied to these facts, plaintiffs contend that, in ceasing operations at Union Station, Southern, L & N, Mo Pac and Union Station have abandoned a line of railroad and that, at least in the case of the L & N's use of Illinois Central facilities, there has been an acquisition of trackage rights over and joint use of a railroad line and terminal incidental thereto.

Defendants concede that § 1 (18), § 5 (2) and § 5 (4) are the applicable and determinative statutory provisions but contend that there has not been, within the meaning of these provisions, an abandonment or an acquisition.

It should be pointed out that the answers to these questions are determinative of the jurisdiction of the I. C. C. to hear and make an adjudication as to public convenience and necessity. And as the matter is before this court on an application by the I. C. C. for an injunction, it is solely for this court to determine whether the I. C. C. has jurisdiction. *Powell* v. *U. S.*, 300 U. S. 276 (1937).

Turning now to those provisions of Sec. 1 (18) which have to do with the abandonment of a line of railroad, and Sec. 5 (2) and Sec. 5 (4) which have to do with the acquisition of trackage rights over and joint use of a railroad line, we quote here the relevant parts of these sections:

"Sec. 1 (18) * * *

> * * * [N]o carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. * * *"

"Sec. 5 (2) * * *

(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph * * *

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto."

"Sec. 5 (4) * * *

It shall be unlawful for any person, except as provided in paragraph (2) of this section, to enter into any transaction within the scope of subdivision (a) of paragraph (2) of this section . . . * * * "

There are, however, specific exceptions to these provisions contained in the statutes. Sec. 1 (22) contains an exception to the requirement of Sec. 1 (18) that an abandonment have I. C. C. approval, which exception reads as follows:

"Sec. 1 (22) * * *

The authority of the Commission conferred by paragraphs (18) to (21) of this section, both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one state . . . * * * "

Sec. 1 (18) contains an exception to the requirement of Sec. 5 (2) and Sec. 5 (4) that an acquisition have I. C. C. approval, which exception reads as follows:

"Sec. 1 (18) * * *

* * * * Nothing in this paragraph or in Section 5 of this title shall be considered to prohibit the making of contracts between carriers by railroad subject to this chapter, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching or side tracks."

Plaintiffs first argue that, in interpreting § 1 (18), § 5 (2) and § 5 (4), we should look to the whole statutory scheme for regulating railroads contained in Part I of 49 U. S. C. Then plaintiffs point out that Union Station, as a "common carrier by railroad," is subject to I. C. C. regulation in many respects and argue that it would be anomalous to hold that the I. C. C. may regulate in these respects and yet have no power to prevent the complete cessation of operations at the station.

Defendants concede that Union Station is a "common carrier by railroad" within the meaning of Part I and as such is subject to regulation in some respects. They contend, however, that this power to regulate in other respects is no indication of a Congressional intent to treat Union Station or its tracks as a "line of railroad" and vest the I. C. C. with the power to prohibit the cessation of operations over these tracks.

We believe that the substantial power admittedly vested in the I. C. C. to regulate Union Station, as a common carrier by railroad, is at least some indication of an intent to treat terminals and terminal tracks as part of a "line of railroad" under § 1 (18). For instance, under Sec. 3 (5) the I. C. C. is vested with the authority under some circumstances to order one common carrier by railroad to allow another to use jointly its terminal facilities. Under Sec. 26 the I. C. C. is vested with authority to require any "common carrier by railroad," which is expressly defined in § 26 (a) to include "any terminal or station company," to install block signal systems, interlocking, automatic train stop and other similar appliances. Under Sec. 6 the I. C. C. is vested with authority to require "every common carrier" to file tariffs setting forth their "rates, fares and charges." The Union Station Company has a tariff on file with the I. C. C. setting forth its charges for "redcap service", pursuant to this section. Sec. 20 (a) (12) prohibits an officer or director of a carrier from serving in such capacity with another common carrier without approval by the I. C. C. Officers and directors of the Union Station Company have acquired authorization under this section. Under Sec. 20 (1) (2) (3) (9) the I. C. C. is author-

ized to require reports from railroad terminal companies. The Union Station has filed annual reports in compliance with this section. To reiterate, it seems unlikely that a common carrier by railroad, subject to such extensive regulation under other provisions of the Act, was intended to be allowed to abandon all of its operations without approval of the I. C. C. pursuant to Sec. 1 (18).

We understand the defendants' argument, with respect to Sec. 1 (18) is, in outline, as follows. The words "line of railroad", construed in the light of the limitations in Sec. 1 (22), mean "main line tracks" of railroad. Therefore, they argue that even if the Union Station tracks are not "spur" or "switching", etc., tracks, their abandonment is nevertheless not within the jurisdiction of the I. C. C. since they are not "main line tracks." Alternatively, defendants argue that Union Station tracks are spur or switching tracks and therefore come squarely within the exception contained in Sec. 1 (22).

In addition to relying on the entire statutory scheme, contained in Part I of the Act, for regulating common carriers, we understand the plaintiffs' further argument, with respect to Sec. 1 (18) is, in outline, as follows. The words "line of railroad" cover all trackage except that specifically excluded by Sec. 1 (22) and the Union Station tracks are not spur or switching tracks and therefore are not excluded by Sec. 1 (22). Alternatively, plaintiffs argue that even if the words "line of railroad" mean "main line tracks," the Union Station tracks are actually main line tracks.

While we think it is useful to define the arguments of the parties in general terms, as we have just done, we also think that it is important to point out that the reasoning of the adjudicated cases does not necessarily fit into this analysis of plaintiffs or defendants.

There are other provisions in Part I of the Act which give aid in construing the words "line of railroad" in Sec. 1 (18) and the words "spur" and "switching" in Sec. 1 (22).

In Sec. 1 (3) (a) the term "railroad" is defined as including ". . . all switches, spurs, tracks, terminals and terminal facilities . . . freight depots, yards and grounds . . ." It

therefore appears that the Act recognizes terminals and terminal facilities as a category separate from spurs and switches. This is an indication that terminal tracks are not meant to be excluded from I. C. C. jurisdiction by Sec. 1 (22). Furthermore, the fact that the statute thus defines "railroad" as including "terminals" and "terminal facilities" is at least some indication that terminals or terminal tracks may be a part of a "line of railroad" within the meaning of Sec. 1 (18). See *Abandonment of Line by Chicago, etc. Ry. Co.*, 131 I. C. C. 421 (1927).

In Sec. 1 (15) (c) and Sec. 3 (5) of the Act the I. C. C. is vested with authority, under certain circumstances, to require joint use of ". . . terminal facilities, including main line track or tracks for a reasonable distance outside such terminal . . ." Again, we see that terminal facilities are recognized as a separate category for regulatory purposes. Also, we see that "main-line tracks" are likewise recognized as a separate statutory category, indicating that they are not the same as a "line of railroad." If "line of railroad" does not mean the same thing as main line track, certainly it must be deemed to be a broader and more inclusive term.

A leading case in this area is *Railroad Commission of California v. Southern Pacific Co.*, 264 U. S. 331 (1924), which is relied upon by both plaintiffs and defendants. There the Railroad Commission ordered three railroads to construct in Los Angeles a new union terminal and to move their passenger operation to that terminal when constructed. The railroads attacked the order of the Railroad Commission in the California courts, contending that compliance would constitute an abandonment under Sec. 1 (18) and therefore I. C. C. approval would be required. The California Supreme Court held that the railroads need not comply for the reason asserted by the railroads, and the Supreme Court of the United States, for the same reason, affirmed.

There is language in this opinion to support defendants' contention that Sec. 1 (18) does not apply unless main line track is to be abandoned, but there is also language in the opinion that Sec. 1 (18) applies if a passenger terminal and its tracks are to be abandoned. However, since main line

track was admittedly involved, it was clear without question that Sec. 1 (18) was applicable and therefore any discussion as to whether main line track must be involved is *dicta*.

An example of language in the opinion supporting defendants' contention may be found at page 345:

> "This is a palpable distinction between the main tracks of an interstate carrier, and its spur, industrial, switching, or side tracks, and shows the legislative intention to retain any substantial change in the main tracks within the control of the Interstate Commerce Commission. It may well be that a mere relocation of a main track of an interstate carrier which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in destination, does not come within ¶¶18 to 21. One might too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state for the public convenience, and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers."

An example of language supporting plaintiffs' contention may be found at pages 343 and 344:

> "It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous. It not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, but it also con-

templates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement. This is a drastic limitation of a carrier's control and use of its own property in order to secure convenience and despatch for the whole shipping and traveling public in interstate commerce. It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot."

We think a careful reading of this entire opinion will make it clear that the Court was not considering the precise question whether abandonment of terminal track requires I. C. C. approval.

The courts have held that the exceptions contained in Sec. 1 (22) should be strictly construed. *Piedmont etc. Ry Co.* v. *I. C. C.*, 286 U. S. 299 (1932); *Lancaster et al.* v. *Gulf etc. Ry Co.*, 298 Fed. 488 (S. D. Tex., 1924); *Chicago etc. Ry. Co* v. *Northern Pacific Ry. Co.*, 120 F. Supp. 710 (W. D. Wash., 1954). In the *Piedmont* case, it is said at page 311:

"The Transportation Act was remedial legislation and should therefore be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended."

Even where an exception contained in Sec. 1 (22) was on its face clearly applicable to proposed construction of trackage, the Supreme Court held the I. C. C. had jurisdiction since ". . . its purpose and effect are . . . of national concern." *Texas & Pacific Ry. Co.* v. *Gulf etc. Ry. Co.*, 270 U. S. 266 (1926) at page 278.

The I. C. C. has ruled on several occasions that while Sec. 1 (18) does not necessarily give it jurisdiction with respect to abandonment of certain terminal buildings as such, it has also ruled that it has jurisdiction with respect to abandonment of terminal trackage. For example, in *Boston Terminal Co. Reorganization*, 312 I. C. C. 373 (1960), the I. C. C., in holding that it did not have jurisdic-

tion to grant or deny approval of the sale and leaseback of a terminal building where the building would continue in use as a terminal building, was careful to point out that its earlier holding in another case "was not a categorical holding that all stations, whatever their character and relation to transportation, are outside the authority granted by § 1 (18); for 'a line of railroad' does not cease to be such merely because it is called, or embraced within, a 'station.'"

The other case referred to by the I. C. C. in the *Boston Terminal* opinion was *Public Convenience Application of Kansas City etc. Ry. Co.*, 94 I. C. C. 691 (1925), where the I. C. C. ruled that it had no jurisdiction with respect to abandonment of a depot building but did have jurisdiction with respect to abandonment and construction of "terminal tracks." In *Abandonment of Line by Chicago etc. Ry. Co.*, 131 I. C. C. 421 (1927), the I. C. C. ruled that it had jurisdiction with respect to abandonment of terminal tracks and apparently even terminal buildings.

The I. C. C. ruling that most strongly supports defendants' position, upon which ruling defendants have heavily relied since the beginning of this controversy, is *Boston and Albany Ry. et al. Abandonment*, 312 I. C. C. 458 (1961). Involved there was the main line trackage, consisting of four tracks, of the Boston and Albany running west from Boston through Newton to Riverside and beyond. Passenger trains entered Boston over these tracks and proceeded into South Station. The Turnpike Authority, in constructing an expressway into Boston, desired to acquire part of the railroad right of way for the entire distance from Riverside to Newton. Therefore, it was proposed that two of the four main line tracks be taken out of service. The Authority desired to acquire all of the right of way for the entire distance between Newton and South Station. Therefore, it was proposed that all four tracks be taken out of service and two new tracks be constructed between these points and a short distance to the north of the old right of way. The railroad also proposed to move some passenger depots along the way so that they would have access to the main line tracks as so rearranged.

The I. C. C. ruled that it had no jurisdiction under Sec. 1 (18).

With respect to the two tracks to be taken out of use between Riverside and Newton, the I. C. C. concluded at page 463:

> "The removal of two of the four multiple main line tracks between Newton and Riverside heretofore described will still leave the applicants with a line of railroad between those points. For this reason, and for the further reason that there will be no change in the present train service, we conclude that the proposed removal does not constitute an abandonment of a line of railroad as contemplated by section 1 (18). Such removal, therefore, is not within our jurisdiction. The applicants' motion to dismiss that portion of the application will be granted."

With respect to the four tracks, which were to be replaced by two new tracks, between Newton and South Station, the I. C. C. concluded at page 463:

> "From the facts above stated it is also clear that the remaining portion of the application in Finance Docket No. 21263, i.e., removal of tracks between South Station and Newton, and that seeking construction between South Station and Newton in Finance Docket No. 21264, considered together cannot be said to constitute an abandonment or construction of a line of railroad within the meaning of section 1 (18). Applicants' entire line, after such removal and construction, will remain in service as before and will render exactly the same service. Compare *Philadelphia, N & N Y R Co. Application,* 67 I. C .C. 252. We are of the opinion that such proposal constitutes only a relocation of a portion of the applicant's line. Insofar as the applications in Finance Dockets Nos. 21263 and 21264 seek authority to abandon, construct, and operate, such applications will thus be dismissed for want of jurisdiction."

Thus the I. C. C. reached the result that the Boston and Albany proposal did not involve the "abandonment" or the "construction" of "a line of railroad" within the meaning of Sec. 1 (18). Nevertheless, in the opinion, there is the following language at page 461:

> "The entire present roadway between Riverside and Boston, which embraces the portion of track removal and that of *abandonment,* consists of four multiple main line tracks. Under the proposals the applicants will have two tracks for the full distance. Thus, after the track removal, *abandonment and construction, a line or railroad between the two points will remain.*" (Emphasis ours.)

It therefore appears that the I. C. C. concluded that even though the railroad's proposal involved an abandonment and construction of main line track, this did not constitute an "abandonment" and "construction" in the statutory sense because it was clear that the public convenience would in no wise be affected by the proposal.

It is, of course, true that it must be determined that the I. C. C. has jurisdiction before the I. C. C. has the authority to make an adjudication as to public convenience and necessity and grant or deny a certificate. It also appears, however, that in determining whether there is jurisdiction, an important factor that must be considered is the possible effect on the public and the railroads of proposed changes in operations.

The courts, as well as the I. C. C., have taken the view that the question whether there is an "abandonment" or "construction" of a "line of railroad" within the meaning of Sec. 1 (18) is to be answered, in part, by consideration of the possible effect on the public and the railroads. In the *Southern Pacific* case, *supra,* the Supreme Court emphasized the high cost of the proposed changes to the railroads. In *Texas and Pacific Ry.* v. *Gulf, etc. Ry.,* 270 U. S. 266 (1926), the Supreme Court held that in determining whether the track involved in that case was "industrial" track within the meaning of Sec. 1 (22) or a

"line of railroad" within Sec. 1 (18), it was proper to consider that its "purpose and effect" were of "national concern". In the case of *City of Des Moines* v. *Chicago, etc. Ry. Co.*, 264 F. 2d 454 (C. A. 8, 1959), the Court said at page 458:

> "With the term 'abandonment' being related in the statute to the question of public convenience and necessity, the courts must recognize the significance of this intertwining and allow the meaning which is thus mixed into the term to have its full play."

At the hearing on the application for a preliminary injunction, evidence was offered by plaintiffs and by defendants as to the economic effect on the railroads of being required to maintain operations at Union Station and as to the effect on the public and Union Station employees if the railroads were allowed to continue operations at the other terminals. At the time of hearing, this court was of the opinion that this evidence was admissible only on the issue as to whether the situation was of such urgency as to require a preliminary injunction. However, as we just indicated in this opinion, we now have the view that this evidence is relevant on the ultimate question to be determined, i.e., whether the I. C. C. has jurisdiction because there has been an abandonment or acquisition of a line of railroad with the meaning of Sec. 1 (18) and Sec. 5 (2). We should make it clear, however, that in considering this evidence in connection with the ultimate issue involved here, we are considering it only for purposes of making a jurisdictional determination and not for purposes of determining whether a certificate should be granted or denied—a matter left solely for determination by the I. C. C. Morover, in considering this evidence in connection with the ultimate issue in this case, we are not concerned with the precise effect of the railroads' actions on themselves and the public; we are only concerned with whether that effect is of sufficient significance to indicate the need for I. C. C. attention. Again, we emphasize that this is only one of the factors, although

an important factor, in determining whether the I. C. C. has jurisdiction.

While there was dispute at the hearing as to extent of the disparity between Union Station facilities and the terminal facilities now being used by Mo Pac and Southern, there seems to be no real doubt that the Union Station facilities are much better.* It is clear that the cessation of operations at Union Station has affected the interchange of passengers in interstate travel. It is also clear that 120 Union Station employees have lost their jobs and 75 remain unemployed.

Taking into consideration the language of and the apparent policy of the statute, the cases construing the statute, the character of the tracks and the operations thereover, and the effect on the public and on the employees of Union Station, we have concluded that at least some of the tracks at Union Station do constitute a "line of railroad" within the meaning of Sec. 1 (18) of the Act and conversely are not "spur" or "switching" tracks within the meaning of Sec. 1 (22); and further that the cessation of operations over these tracks constitutes an abandonment and not a mere relocation. Accordingly, Union Station, L & N, Southern and Mo Pac have abandoned a line of railroad in violation of the provisions of Sec. 1 (18).

We have further concluded that some of the tracks at Illinois Central terminal are likewise a "railroad line" within the meaning of Sec. 5 (2) of the Act and conversely are not "spur" or "switching" tracks within the meaning of Sec. 1 (18) of the Act; and further that the institution of operations there by L & N constitutes an acquisition of trackage rights and not a mere relocation. Accordingly, L & N has acquired trackage rights over or joint use of a line of railroad in violation of Sec. 5 (2) and 5 (4) of the Act.

---

* There is no evidence or contention that the L & N facilities at the Illinois Central terminal are not equal to those at Union Station. Moreover, the I. C. C. might well determine that the Southern and Mo Pac facilities are adequate.

Union Station makes the separate argument that there could be no abandonment so far as it is concerned because there has been a complete cessation of demand for its facilities. Even if Union Station is correct in this contention, this would have no practical effect on this litigation, because if the tenant railroads have abandoned Union Station in violation of Sec. 1 (18), any injunction to which plaintiffs are entitled would of necessity run against Union Station. *McGrody* v. *B & O Ry. Co.*, 217 F. Supp. 252 (E. D. Pa. 1963), relied upon by Union Station, is not apposite because in that case there was no demand from the public or the railroads for the services of the tug boat involved which had been used to move trains. Here there is demand from the public, through the City, for the services at Union Station.

Athough the lease of the tenant lines at Union Station expired by its terms on April 1, 1964, the tenant lines do not contend that the expiration of the lease affects the question whether there has been an abandonment. They are correct in making this concession. *Smith* v. *Hoboken Ry. Co.*, 328 U. S. 123 (1946).

Remedy

Since the facts determinative of the issues are not in dispute, and it is clear under the applicable law that plaintiffs are entitled to some relief, there remains to be decided only the extent and nature of the relief to which plaintiffs are entitled.

We have held that there has been an unlawful abandonment of a "line of railroad" at Union Station in violation of Sec. 1 (18) and an unlawful acquisition of a "railroad line" at the Illinois Central terminal in violation of Sec. 5 (2) and 5 (4). It seems to have been assumed by plaintiffs, and even by defendants, that if plaintiffs are ultimately entitled to prevail as against all defendants, proper relief would be to require the restoration of operations at Union Station just as they existed prior to April 1, 1964. It does not necessarily follow, however, that the relief should be this complete.

In the first place, while we are clear that there has been

an unlawful abandonment of a "line of railroad" at Union Station in that at least some of the tracks there constitute a "line of railroad", it is not so clear whether all of the tracks and the terminal building itself constituted or were parts of a line of railroad and were unlawfully abandoned.

In the second place, while complete cessation of operations over a line of railroad clearly constitutes an abandonment, it is far from clear how far operations may be reduced or how far the nature of services rendered may be altered before an abandonment would take place in violation of Sec. 1 (18). These matters having to do with reduction and changing the nature of services are normally regulated by state regulatory bodies.

Plaintiffs here seek only injunctive relief against an unlawful abandonment and an unlawful acquisition, and it would seem to follow that in granting relief, this court could go no further than to require the defendants to cease their violation of Sec. 1 (18) and Sec. 5 (2) and Sec. 5 (4). These questions as to the relief plaintiffs are entitled to should receive the particular attention of the parties at the plenary hearing which will be held on this matter.

We do believe that plaintiffs are entitled to a preliminary injunction, enjoining defendant Union Station from disposing, without leave of court, any of the remaining property now held by it and used by it prior to April 1, 1964, in operating the terminal and terminal facilities.

Plaintiffs will prepare and submit an order in this cause.

This 12th day of June, 1964.

BAILEY BROWN,
United States District Judge.

A True Copy.

Attest:

W. LLOYD JOHNSON,
Clerk,

By P. G. MCCLURE, *D. C.*

Letter of Judge Bailey Brown to Attorneys

Dated and Filed July 6, 1964

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TENNESSEE
Memphis 3

Sitting in Jackson

Chambers of BAILEY BROWN, Judge.

Mr. Thomas L. Robinson, United States District Attorney, Memphis, Tennessee

Mr. Patrick Johnson, Sr., Attorney, City of Memphis, Memphis, Tennessee

Mr. Edward P. Russell, Attorney at Law, Memphis, Tennessee

Mr. Harry W. Laughlin, Attorney at Law, Memphis, Tennessee

Mr. William F. Kirsch, Attorney at Law, Memphis, Tennessee

Mr. John Mack, Attorney at Law, Memphis, Tennessee

Mr. Jesse E. Johnson, Jr., Attorney at Law, Memphis, Tennessee

In Re: Interstate Commerce Commission v. Memphis Union Station et al., Civil No. 5192.

Gentlemen:

Plaintiffs have filed a motion for "clarification, instruction and guidance in preparing order to be entered on motion for preliminary injunction," which is, in effect, a motion to amend our memorandum decision. They propose, in this motion, that not only Union Station be enjoined from disposing of its property, but also that (1) L & N and Illinois Central be enjoined from carrying out their agreement for use of terminal trackage and (2) that the defendants be mandatorily enjoined to reinstitute service at Union Station as it existed prior to April 1.

Plaintiffs have also filed a motion for summary judgment on the theory that the determinative facts are undisputed and therefore the injunctions they propose should now be made final.

We believe that these motions do require a hearing at this time, and therefore a hearing will be held at Memphis on Saturday, July 18, at 9:30 A. M.

We think it might be helpful to advise counsel of our present thinking with respect to these motions and of the action we are considering taking.

As stated in our memorandum decision, we think, from the proof adduced at the hearing on the application for a temporary injunction, that L & N and Illinois Central have illegally participated in the acquisition of trackage rights over a railroad line and that Union Station, L & N, Mo Pac and Southern have illegally abandoned a line of railroad. We stated, in that decision, that at the plenary hearing we would consider the provisions of a final injunction with respect to acquisition and abandonment.

After further reflection, we have concluded that plaintiffs are entitled to an injunction as to the L & N and Illinois Central prohibiting their carrying out their trackage agreement. Such an injunction would, we think, clearly be within the authority of, and indeed is required by, Sec. 5 (8). With respect to the abandonment at Union Station, we do not believe, for reasons set out in our decision, that we have authority under Sec. 1 (20) to require the reinstitution of service as it existed prior to April 1. In short, we do not see how we can require defendants to do more than they were required by the Act to do prior to the abandonment. We have, however, concluded that plaintiffs are entitled to an injunction, requiring the defendants to cease abandonment of the tracks of Union Station. Such an injunction would, we think, clearly be within the authority of, and indeed is required by, Sec. 1 (20).

We also think, however, in view of all the circumstances that the defendants, if they choose to appeal, should be allowed a stay, upon giving proper bond, with respect to

the injunction insofar as it relates to acquisition and abandonment.

By holding this hearing now and entering such an injunction at this time, our resolution of these difficult questions could then be reviewed in the Court of Appeals at an earlier date than they would be if we delayed action until after a plenary hearing in the fall.

We further believe, as indicated in our opinion, that the operative facts determinative of this case are not in dispute, and therefore we think that the motion for summary judgment should be granted and the relief, herein indicated, should be made final.

It goes without saying that we will receive additional testimony or affidavits from the parties, if they desire to offer more, to be considered on plaintiffs' motion for a summary judgment and for a final injunction. We will also hear arguments from all parties who desire further argument.

Sincerely yours,

BAILEY BROWN.

BB:asw

APPENDIX C

Final Judgment of the United States District Court for the Western District of Tennessee

Entered October 14, 1964

This cause came on to be further heard on the 4th day of September, 1964, on the Court's memorandum decision dated June 12, 1964, and the Court's letter dated July 6, 1964, addressed to counsel of record, which letter was made a part of the record in this cause on plaintiff's oral motion, and on the following written motions:

(1) Plaintiff's motion for clarification, instruction and guidance in preparing order to be entered on motion for preliminary injunction;

(2) Motion of intervenor-plaintiff, Railway Labor Executives' Association for the Court to enter an order enjoining defendants from abandoning Union Station;

(3) Motion of intervenor-plaintiff, City of Memphis, for Court to enter order enjoining defendants from abandoning Union Station;

(4) Motion of Louisville and Nashville Railroad Company and Illinois Central Railroad Company, defendants, for partial summary judgment;

(5) Plaintiff's motion for summary judgment;

(6) Motion of defendant, Memphis Union Station Company, for leave to sell a locomotive;

(7) Motion of defendants, Missouri Pacific Railroad Company and Union Railway Company, to amend their joint answer herein;

(8) Motion of defendant, Memphis Union Station Company, to amend its answer herein;

(9) The respective formal replies thereto;

and on the following oral motions:

(1) Motion of defendant, Illinois Central Railroad Company, to dismiss the action as to it;

(2) Motion of defendant, St. Louis Southwestern Railway Company, to dismiss the action as to it;

(3) Motion of defendant, Union Railway Company, to dismiss the action as to it;

(4) The respective responses thereto; and

Counsel for all parties having appeared and presented argument, and the Court having considered the entire record, including all pleadings, testimony of witnesses in open court, affidavits, certified documents, exhibits, briefs of counsel and their oral arguments, finds:

(1) The motion of Misouri Pacific Railroad Company and the Union Railway Company to amend their joint answer should be granted;

(2) The motion of defendant, Memphis Union Station Company, to amend its answer should be granted;

(3) Defendants, Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, and the Southern Railway Company, have abandoned a line of railroad at Memphis Union Station in violation of the provisions of Section 1 (18)-(20) of the Interstate Commerce Act;

(4) Defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, on or about April 1, 1964, entered into a trackage right arrangement for the use of certain track and the terminal incidental thereto at Illinois Central passenger station in Memphis, Tennessee, in violation of the provisions of Section 5 (2) and (4) of the Interstate Commerce Act;

(5) Plaintiff's motion for summary judgment should be granted to the extent that the defendants, Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, and Southern Railway Company, should be permanently prohibited and enjoined from abandoning a line of railroad at Memphis Union Station, without authority from the Interstate Commerce Commission,

in violation of Section 1 (18)-(20) of the Interstate Commerce Act;

(6) Defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, should be permanently prohibited and enjoined from operating under the trackage right arrangement, covering certain tracks and the terminal incidental thereto at Illinois Central passenger station which has been found by this Court to have been entered into in violation of Section 5 (2) and (4) of the Interstate Commerce Act;

(7) The motion of defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, for partial summary judgment should be denied;

(8) The motion of defendant, Memphis Union Station Company, for leave to sell a locomotive should be granted in that Memphis Union Station Company should be permitted to dispose of the six hundred horsepower light switching yard diesel locomotive, Identification No. 10, 1942 Model, Electric Motor Division, General Motors;

(9) Memphis Union Station Company, in order to preserve the status quo, should be prohibited and enjoined from selling any property whatsoever, including but not limited to real estate, fixtures and movable equipment, without permission of this Court;

(10) The motion of defendant, Illinois Central Railroad Company, to dismiss this action as to it should be denied;

(11) The motion of defendant, St. Louis Southwestern Railway Company, to dismiss this action as to it should be denied;

(12) The motion of defendant, Union Railway Company, to dismiss this action as to it should be denied;

(13) The permanent injunction ordering the defendants, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, Southern Railway Company and Memphis Union Station Company, to cease their abandonment of a line of railroad at Memphis Union Station, without authority

from the Interstate Commerce Commission, in violation of the provisions of Section 1 (18)-(20) of the Interstate Commerce Act, and the permanent injunction enjoining the Illinois Central Railroad Company and the Louisville and Nashville Railroad Company from continuing its trackage right arrangement commencing on or about April 1, 1964, for the use of certain track and the terminal incidental thereto at Illinois Central passenger station in Memphis, Tennessee, in violation of the provisions of Section 5 (2) and (4) of the Interstate Commerce Act, should be stayed pending an appeal by the defendants, conditioned upon the posting of bonds in the amount of Twenty-Five Thousand Dollars ($25,000.00) each by Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, and Southern Railway Company.

It Is, Therefore, By The Court Ordered:

(1) That Missouri Pacific Railroad Company and the Union Railway Company are permitted to amend their joint answer;

(2) That Memphis Union Station Company is permitted to amend its answer;

(3) That the motion of plaintiff, Interstate Commerce Commission, for summary judgment be and it hereby is granted;

(4) That defendants, Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, Southern Railway Company, and each of them, their directors, officers, agents, servants, employees, and all persons, both individual and corporate, in active concert and participation with them, be, and they are hereby permanently enjoined from their continued abandonment, without authority from the Interstate Commerce Commission, of a line of railroad and the operation thereof at Memphis Union Station, or contributing to such abandonment in violation of Section 1 (18)-(20) of the Interstate Commerce Act;

(5) That defendants, Illinois Central Railroad Company and Louisville and Nashville Railroad Company, and their directors, officers, agents, servants, employees, and all persons, both individual and corporate, in active concert and participation with them, be, and they are hereby enjoined from the continuation and effectuation of their arrangement for the acquisition of trackage rights over or joint use of a line of railroad and the terminal incidental thereto at Illinois Central passenger station at Memphis, Tennessee, entered into on or about April 1, 1964, in violation of Section 5 (2) and 5 (4) of the Interstate Commerce Act;

(6) That the motion of defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, for partial summary judgment be and it hereby is denied;

(7) That the motion of defendant, Memphis Union Station Company, for permission to sell one six hundred horsepower light switching yard diesel locomotive, Identification No. 10, 1942 Model, Electric Motor Division, General Motors, be and it is hereby granted:

(8) The defendant, Memphis Union Station Company, and its directors, officers, agents, servants, employees, and all persons, both individual and corporate, in active concert and participation with it, be and they hereby are, restrained and enjoined from disposing of any remaining property whatsoever, including but not limited to real estate, fixtures and movable equipment, now held or owned by Memphis Union Station Company, without permission of this Court.

(9) That the motions of defendants, Illinois Central Railroad Company, St. Louis Southwestern Railway Company, and Union Railway Company, to dismiss the instant action as to them be, and they hereby are denied;

(10) The permanent injunction against the defendants, Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company and the Southern Railway Company,

pertaining to their violation of Section 1 (18)-(20) of the Interstate Commerce Act and the permanent injunction against the defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, pertaining to their violation of Section 5 (2) and 5 (4) of the Interstate Comemrce Act be, and they hereby are stayed, pending appeal, conditioned upon the posting of bonds in the amount of Twenty-Five Thousand Dollars ($25,000.00) by the Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company and Southern Railway Company;

(11) The motion by the Memphis Union Station Company, filed on October 6, 1964, with respect to the final judgment to be entered herein, is now overruled.

The further ruling of this Court on September 4, 1964, is made a part of the record in this cause.

BAILEY BROWN,
United States District Judge.

Approved for Entry Oct. 14, 1964:

Edward P. Russell, Atty. for Memphis Union Station Co., Missouri Pacific Railroad Co., Union Railway Co., St. Louis Southwestern Ry. Co.

Thomas L. Robinson, United States Attorney for Interstate Commerce Commission.

Wm. F. Kirsch, Jr., Atty. for Railway Labor Executives Association.

A True Copy.

Attest:

W. LLOYD JOHNSON, *Clerk,*
By P. G. MCCLURE, *D. C.*

[Seal.]

Order Amending Final Judgment

Filed October 23, 1964

This cause came on to be further heard upon the motion to amend Final Judgment, filed herein by the defendants Louisville & Nashville Railroad Company and Illinois Central Railroad Company, on October 15, 1964; and, it appearing to the Court that this motion is well taken, should be granted and is approved by all parties:

It Is Hereby Ordered by the Court that the Final Judgment entered in this cause on October 14, 1964, be and the same is hereby amended as follows:

1. By adding to the end of subparagraph (6) of the Court's findings on page 4, immediately following the words Interstate Commerce Act and preceding the semi-colon, the following words: "Unless and until such trackage rights agreement is authorized by the Interstate Commerce Commission;"
2. By adding to the end of subparagraph (5) of the Court's order on page 7, immediately following the words Interstate Commerce Act and preceding the semi-colon, the following words: "Unless and until such trackage rights agreement is authorized by the Interstate Commerce Commission;"
3. By substituting the word "electromotive" for the words "'electric motor" wherever used in said Final Judgment;

And, this order shall become a part and be incorporated into the Final Judgment entered in this cause on October 14, 1964.

BAILEY BROWN,
United States District Judge.

APPENDIX D

Nos. 16466 through 16471

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, AND RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Intervenor-Plaintiffs-Appellees,*

v.

MEMPHIS UNION STATION COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, UNION RAILWAY COMPANY, LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SOUTHERN RAILWAY COMPANY, *Defendants-Appellants.*

Decided March 31, 1966.

APPEAL from the District Court of the United States for the Western District of Tennessee.

Before: EDWARDS and CELEBREZZE, Circuit Judges, KENT, District Judge*

EDWARDS, Circuit Judge. The Interstate Commerce Commission filed these complaints in the United States District Court for the Western District of Tennessee. The complaints sought injunctions to restrain five railroads [1] and the Memphis Union Station Company from abandoning operations at the Memphis Union Station without prior ICC approval of both the abandonment and the railroads' alternate arrangements.

---

* Honorable W. Wallace Kent, Chief Judge, U. S. District Court for the Western District of Michigan, sitting by designation.

[1] Defendant Union Railway Company is a wholly-owned subsidiary of defendant Missouri Pacific Railroad Company.

Prior to the commencement of these actions, the railroads in question (in the face of an ICC warning) had actually abandoned service to the Union Station and each of the operating railroads had found other passenger terminal facilities.

The cessation of operations was accomplished without application for abandonment of lines of railroad to the ICC and the substituted service was accomplished without application for approval of the agreement for extension of service to the other terminals.

The City of Memphis intervened to argue against the abandonment of the Union Station on behalf of the city and its citizens, and a representative of the Railway Labor Executives' Association intervened to contend that the interests of the jobs of 120 people who had been laid off by the closing of the Union Station should be taken into account likewise, and would be if the ICC were held to have jurisdiction of the matter.

The merits of the abandonment and alternate service issues were not before the District Court and are not before us. Appellees contended simply that neither could be lawfully accomplished without ICC approval under the terms of the Interstate Commerce Act, 49 U.S.C. §§ 1-27 (1964).

Judge Bailey Brown after full hearing issued a memorandum decision holding that the Interstate Commerce Commission did have jurisdiction in relation to both the abandonment issue and the agreement for extension of services issue, and issued injunctions requiring the defendants to cease and desist from the violations found.

The appellants contend that they are exempt from ICC jurisdiction in relation to the current problem because of the exception contained in Section 1(22), 41 Stat. 478 (1920), 49 U.S.C. § 1(22) (1964). The exemption reads:

> "The authority of the Commission conferred by paragraphs (18) to (21) of this section, both inclusive shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State . . . ." 41 Stat. 478 (1920), 49 U.S.C. § 1(22) (1964).

Appellants also argue that Congress in 1920 in enacting the ICC legislation, and in 1958 in amending it, gave consideration to the exact problem currently before us and specifically declined to grant the ICC power over union terminals.

Appellees rely upon the broad language of Sections 1(18) and 1(20), and Section 5(2 and 4) as follows:

> "[N]o carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad or the operation thereof, unless and until it shall first have obtained from the Commission a certificate . . . ." 41 Stat. 477-78 (1920), as amended, 49 U.S.C. § 1(18) (1964).
>
> "Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest. . . ." 41 Stat. 478 (1920), 49 U.S.C. § 1(29) (1964).[2]
>
> "It shall be lawful, with the approval . . . of the commission . . .
>
> (ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto. . . ." 54 Stat. 905 (1940), 49 U.S.C. § 5(2).
>
> (1964).

Section 5(4) makes unlawful such an agreement without Commission approval.

The ICC also relies upon a number of cases where the ICC has assumed jurisdiction, sometimes without contest from the parties involved, in terminal track situations some-

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[2] Section 1(20) also provides criminal penalties for violation of Sections 1(18) and (19).

what comparable to that which we have before us. *St. Joseph Union Depot Co.*, 133 I.C.C. 537 (1927); *Atchison, Topeka & Santa Fe Railway Co. Operation*, 224 I.C.C. 39 (1937); *Fort Worth Union Passenger Station Co.*, 97 I.C.C. 698 (1925); *St. Louis, San Francisco & Texas Railway Co. Trackage Rights*, 267 I.C.C. 30 (1946).

Finally, the ICC and the District Judge rely upon Mr. Justice Taft's opinion in *Railroad Commission of California* v. *Southern Pacific Company*, 264 U.S. 331 (1924), which we shall refer to in more detail later.

The Cotton Belt Railroad (St. Louis Southwestern Railway Co.) appears with an entirely separate argument and asks to be dismissed as an appellant. Cotton Belt says that it had nothing to do with the matter, since it had not been operating any trains into the Union Station since 1956.

This appeal then is specifically concerned with problems of statutory interpretation. The detailed facts are not in dispute. They are quoted below from a statement of facts in appellant Southern Railway Company's brief with which all parties express agreement:

> "For many years, defendants Missouri Pacific Railroad Company ('MoPac'), the Louisville and Nashville Railroad Company ('L & N'), Southern Railway Company ('Southern') and the Illinois Central Railroad Company ('Illinois Central') have provided rail passenger service in interstate commerce to the city of Memphis, Tennessee. Defendant St. Louis Southwestern Railway Company ('Cotton Belt') rendered similar service to Memphis until it was discontinued in 1952. Defendant Union Railway Company ('Union Railway'), wholly owned Tennessee switching and terminal subsidiary of MoPac, owns the main line tracks used by the MoPac passenger trains to reach the Memphis Union Station.
>
> "In 1909, the N.C. & St. L. Ry. Co. (later merged with L&N) and defendants MoPac, L&N, Southern and Cotton Belt organized the Memphis Union Station Company ('Union Station') for the purpose of constructing and maintaining a union passenger depot for the joint use of the proprietary railroads as tenants. The union

station was completed in 1912, at which time the four railroads rerouted their passenger trains from their former stations in Memphis to the new union depot. Forty percent of Union Station's stock is owned by the L&N; each of the other three railroads owns 20% of the shares. The expenses of Union Station have been prorated among the proprietary railroads, as tenants, on a user basis.

"Union Station's property is located immediately north of, and adjacent to, the mainline tracks of the L&N, Southern and Union Railway on Broadway. To reach the Union Station tracks, passenger trains backed into the station from the mainline tracks on Broadway; the same trains departed via the same route, the station tracks being 'stub-end' tracks leading to nothing but the station building itself and related facilities.

"Prior to 1925, Union Station classified its station tracks as 'main line' tracks in reports filed with the Commission. In that year, however, the Commission ruled, in *Memphis Uuion Station Co.*, 97 I.C.C. 418, 429 (1925), that the company 'owns no mainline milage' and characterized Union Station's tracks as 'yard tracks and sidings.' Since that time, Union Station, by order of the I.C.C., consistently has identified its tracks in reports to the Commission as 'Yard tracks.'

"On November 1, 1952, the Cotton Belt discontinued its passenger service to Memphis by authority of the Arkansas Public Service Commission. Thereafter, it ceased to use Union Station. No approval for this withdrawal by Cotton Belt was obtained from the Commission; nor did the Commission ever allege that this action required prior Commission approval.

"The original joint operating agreement between the railroads for the use of Union Station was for 50 years, expiring April 1, 1962. Subsequently, it was agreed by MoPac, L&N and Southern to extend the agreement another two years, to April 1, 1964. Confronted with the economic pinch of declining rail patronage and rising costs of operating Union Station, none of the tenant railroads desired any further

extension of the agreement. Upon the expiration date, both MoPac and Southern reactivated their former passenger stations in Memphis, and the L&N reached agreement with the Illinois Central to share the use of the Illinois Central's station 2 blocks west of Union Station.

* * * * * * *

"The Director of the Commission's Bureau of Finance, in response to letters from employees of Union Station, on February 27, 1964, directed identical letters to MoPac, L&N and Southern inquiring as to their intentions and asking whether any abandonment was contemplated that required Commission approval. Both MoPac and L&N, by written replies, confirmed their intentions to leave Union Station at the expiration of the agreement and expressed their opinion that no Commission approval was required. Southern orally advised the Commission that if the other two railroads terminated operations at Union Station, it would have no alternative but to do likewise.

"On March 16, 1964, the Commission's Director, Bureau of Finance, again addressed letters to the interested railroads stating it was his 'informal opinion that a railroad may not abandon operations over a line of another such carrier without approval under section 1(18), except to the extent it may be exempt as provided in that section or in section 1(22),' and suggested that 'in order to avoid a possible violation of the Interstate Commerce Act' the railroads consider the filing 'of appropriate applications which may be accompanied by motions to dismiss for lack of jurisdiction.' By written replies, dated March 24 and 25, 1964, both L&N and MoPac reiterated their view that the relocation of their Memphis passenger facilities was exempt from the requirement of prior Commission approval under Section 1(18). No further communication was received from the Commission, and on April 1, 1964, each of the three railroads terminated

operations at Union Station and commenced using station facilities at their new locations in Memphis.

"On May 14, 1964, over seven weeks after these changes had been made, the Commission filed a complaint in the United States District Court for the Western District of Tennessee against Union Station, its proprietary railroads and Illinois Central.

"The complaint alleged that on April 1, 1964, Union Station, MoPac, L&N and Southern had abandoned operations at Union Station without having first obtained from the Commission a certificate that the present and future public convenience and necessity permit of such abandonment, as allegedly required by Section 1(18) of the Interstate Commerce Act, 49 U.S.C. 1(18), and that the District Court should issue an injunction, under Section 1(20) of the Act, 49 U.S.C. 1(20), restraining defendants from abandoning or contributing to the abandonment of the use and operation of Union Station's facilities.

"The complaint also alleged that commencing April 1, 1964, defendant L&N had instituted passenger service to and from the Memphis station of Illinois Central without having first obtained Commission approval, as allegedly required by Section 5(2) of the Interstate Commerce Act, 49 U.S.C. 5(2), and that the District Court should issue an injunction, under Section 5(8) of the Act, 49 U.S.C. 5(8), restraining L&N from using Illinois Central's station and station tracks.

"Both the City of Memphis and the Railway Labor Executives' Association intervened as plaintiffs in support of the Commission's complaint.

"After a hearing on the Commission's motion for preliminary injunction, District Judge Bailey Brown on June 12, 1964, issued a memorandum decision, which was later supplemented by a letter to all parties, July 6, 1964. In his opinion, Judge Brown concluded:

(1) 'that at least some of the tracks at Union Station do constitute a "line of railroad" within the meaning of Sec. 1(18) of the Act and conversely are

not "spur" or "switching" tracks within the meaning of Sec. 1(22); and further that the cessation of operations over these tracks constitutes an abandonment and not a mere relocation. Accordingly, Union Station, L&N, Southern and MoPac have abandoned a line of railroad in violation of the provisions of Sec. 1(18).'

(2) 'that some of the tracks at Illinois Central terminal are likewise a "railroad Line" within the meaning of Sec. 5(2) of the Act and conversely are not "spur" or "switching" tracks within the meaning of Sec. 1(18) of the Act; and further that the institution of operations there by L&N constitutes an acquisition of trackage rights and not a mere relocation. Accordingly, L&N has acquired trackage rights over or joint use of a line of railroad in violation of Sec. 5(2) and 5(4) of the Act.'

"After further hearing, the Court entered its final judgment and order, October 14, 1964, amended October 23, 1964, which confirmed the prior findings of the memorandum decision and granted a Commission motion for summary judgment to the extent that Union Station, MoPac, L&N and Southern were enjoined from abandoning a 'line of railroad' at Union Station without approval of the Commission and L&N and Illinois Central were enjoined from operating under a trackage agreement at Illinois Central passenger station unless and until such agreement was authorized by the Commission. These permanent injunctions were stayed pending appeal upon the posting of supersedeas bonds by defendants Union Station, MoPac, L&N and Southern."

While the positions of the various appellant railroads are not identical, our view of the relevant statutory provisions does not require the specific details which each has added p[illegible] own individual situation, except to the exte[illegible] in this opinion.

We believe the two principal questions for our decision are these: (1) Was the trackage of the Memphis Union

Station which was abandoned by appellants in 1964 a "line of railroad" within the meaning of Section 1(18) so as to require ICC approval prior to abandonment?

(2) Where at least one of the appellants entered into a trackage use agreement with another railroad in order to operate from alternate facilities, did such an agreement require prior ICC approval under Sections 5(2) and 5(4)?

The District Judge who heard this case answered both of these questions Yes.

The Claim of Exemption

Appellants rely principally in this appeal upon the contention that since the Memphis Union Station was reached by switches from the main lines of the railroads concerned, and since the station tracks were "stub end" tracks, the exemption from regulation of Sec. 1(22) applies to them. The language of the section exempts "spur, industrial, team, switching or side tracks located . . . wholly within one state. . . ."

We recognize, of course, that in some sense the Memphis Union Station trackage could be referred to as "spur" or "switching" trackage. It is certainly not trackage on which trains move "through."

But clearly it is trackage on which interstate passenger service has both originated and terminated since 1912. No passenger seeking to leave Memphis for another state, or seeking to come to Memphis from another state by any of the railroads operating therefrom during all of that period could do so without traveling over some of the trackage of the Memphis Union Station. The now abandoned operations were an integral part of uninterrupted transportation of interstate passengers. We do not think that the normal usage of language would include a facility such as the trackage of the Memphis Union Station as "spur" or "switching" tracks. *Detroit & Mackinac Railway Co.* v. *Boyne City, Gaylord & Alpena Railroad Co.*, 286 Fed. 540, 546-47 (E.D. Mich. 1923).

Administrative Interpretation

The weight of administrative interpretation is plainly in support of the view expressed above. Repeatedly during the history of the operation of the Memphis Union Station the ICC has assumed that it had jurisdiction over operations over its trackage. *Rules, Standards and Instructions for Signal Systems—Memphis Union Station Co.*, 310 I.C.C. 669 (1960); *Memphis Union Station Company—Extension of Operating Agreement*, Finance Board No. 3, Interstate Commerce Commission, Finance Docket No. 21933, April 25, 1962; *Memphis Union Station Company*, 97 I.C.C. 418 (1925).

Similar interpretations have been made repeatedly by the ICC pertaining to terminal trackage at other union terminals. *St. Joseph Union Depot Co., supra; Atchison, Topeka & Santa Fe Railway Co. Operation, supra; Fort Worth Union Passenger Station Co., supra; St. Louis, San Francisco & Texas Railway Co., Trackage Rights, supra.* See also *Illinois Central Railroad Co. Construction and Trackage Rights*, 307 I.C.C. 493 (1959), *modified*, 317 I.C.C. 502 (1962); *Norfolk & Western Railway Company* v. *United States*, 241 F. Supp. 974 (N.D. Ohio 1965), *prob. juris. noted*, 34 U.S.L. Week 3171 (U.S. Nov. 16, 1965) (No. 543).

While not controlling of our decision, the administrative interpretation is entitled to great weight. *Udall* v. *Tallman*, 380 U.S. 1 (1965); *Review Committee, Venue VII, Commodity Stabilization Service, United States Department of Agriculture* v. *Willey*, 275 F.2d 264 (C.A. 8, 1960), *cert. denied*, 363 U.S. 827 (1960).

Trackage Use and National Concern

We have already emphasized the most important fact in the record—that passengers moved in interstate commerce to and from the City of Memphis over the Memphis Union Station tracks in continuous uninterrupted movements from 1912 to 1964. It is, we believe, the use of these tracks as an integral part of railroad systems developed to accommodate interstate commerce which determines that they constitute

"a line of railroad" within the meaning of Section 1(18). *Transit Commission* v. *United States,* 289 U.S. 121 (1933).

In this regard the District Judge found that such use was a subject of "national concern." *United States* v. *Idaho,* 298 U.S. 105 (1936); *Texas and Pacific Railway Co.* v. *Gulf Railway Co.,* 270 U.S. 266 (1926). The evidence in this record seems to us amply to justify the District Judge's finding in this regard. It certainly cannot be set aside as "clearly erroneous." Rule 52(a) Fed. R. Civ. P.

LEGISLATIVE HISTORY

With all of this having been said, appellant's most persuasive argument has yet to be dealt with. Appellant Southern's brief seeks to demonstrate that the legislative history of the Interstate Commerce Act shows conclusively that Congress in adopting this legislation debated and rejected inclusion of railroad stations under the regulatory power of the ICC. In this regard appellants rely upon an amendment offered by Congressman McClintic of Oklahoma:

> "Provided further, that the Commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission." 58 Cong. Rec. 8578 (1919).

This facet of the legislative history argument is not particularly persuasive in regard to our present case. The issue here does not pertain to the station building or depot. It pertains to railroad trackage to or in such a station. Station buildings or depots might be altered or replaced without material (or any) change in trackage. The rejection of the quoted amendment may not be read as squarely applicable to the instant dispute.

This distinction is not, however, of any help in dealing

with the quotation from Congressman Esch of Wisconsin during debate on the bill:

> "But neither provision, the building of new lines or the abandonment of old ones, affects spurs or switches or terminal tracks or interurban lines wholly within a State. These we leave to State control, where they already belong." 58 Cong. Rec. 8316 (1919).

We recognize that this statement is due appropriate weight in our consideration of legislative intent and that it is inconsistent with the result reached by the District Judge. Taking into account, however, all of the factors which bear on proper interpretation of this statute, we do not think this aspect of the legislative debate is controlling.

As we have seen, Congress did not employ in the exemption clause words which in normal usage would include the trackage of the Memphis Union Station.

Further, we believe that it is significant that although the words "terminal tracks" were used in the debate, they were not employed in the exemption clause, Sec. 1(22), upon which appellants largely plant their case.

And as Judge Brown notes, this is true, even though the terms "terminal" and "terminal facilities" as classifications separate from "switches" and "spur tracks" were actually employed in another unrelated section of the statute.[3]

Most important of all, in the interpretation of legislative intent is the clearly expressed purpose of Congress to grant authority to the ICC to deal with the construction, extension and abandonment of any lines of railroad employed in interstate commerce. See Sections 1(18) and

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[3] "The term 'railroad' as used in this chapter shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property." 41 Stat. 474 (1920), as amended, 49 U.S.C. § 1(3)(a) (1964).

1(20). Such a purpose seems to us to express a grant of authority over interstate railroad construction and abandonment as a part of a national scheme and purpose.

It appears to us that this purpose was recognized early in the interpretation of the ICC legislation:

> "The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged. *Dayton-Goose Creek Railway Co.* v. *United States*, 263 U.S. 456, 478 (1924).

In the *Southern Pacific* case, Chief Justice Taft discussed union terminal problems as a part of interstate railroad regulation:

> "We think, however, that means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of § 402. They provide that no interstate carrier shall undertake the extension of its line of railroad or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation over such additional or extended line of railroad unless and until the Commission shall certify that public convenience present or future requires it, *and that no carrier shall abandon all or any*

portion of its line or the operation of it without a similar certificate of approval. Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals." *Railroad Commission* v. *Southern Pacific Co., supra* at 344. (Emphasis supplied.)

As Judge Brown pointed out in his excellent memorandum opinion in this case:

> "The courts have held that the exceptions contained in Sec. 1(22) should be strictly construed. *Piedmont etc. Ry. Co.* v. *I. C. C.*, 286 U.S. 299 (1932); *Lancaster, et al.* v. *Gulf etc. Ry. Co.*, 298 Fed. 488 (S.D. Tex., 1934); *Chicago etc. Ry. Co.* v. *Northern Pacific Ry. Co.*, 120 F. Supp. 710 (W.D. Wash., 1954). In the *Piedmont* case, it is said at page 311:
>
> > 'The Transportation Act was remedial legislation and should therefore be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended."

Trackage at the Memphis Union Station which had previously been used for continuous railroad passenger service in interstate commerce was a part of several national railroad systems. It was created, as this record clearly shows, at great expense. It is properly termed, as the District Judge held, a subject of national concern. We do not think that Congress intended such facilities to be exempted from regulation.

It is the opinion of this court that the abandonment of railroad passenger service at the Memphis Union Station on or about April 1, 1964, required the abandonment of a "line of railroad" within the meaning of Sec. 1 (18) and 1(20) of the Interstate Commerce Act. Clearly under the cited provisions such abandonment could be legally accomplished only by prior approval of the Interstate Commerce Commission.

As to the remaining issues in this appeal, we feel that the District Judge likewise reached the right result. Even more specifically than Sections 1(18) and 1(20) prohibit abandonment without ICC approval, Sections 5(2) and (4) appear to us to require prior ICC approval for the trackage right agreement between the defendant Louisville and Nashville Railroad Co. and the Illinois Central Railroad Co. for the use by the former of the latter's trackage and passenger station. We affirm Judge Brown's judgment in this respect on the reasoning of his opinion and the facts as found by him.

The last issue which seems to us to merit specific mention is the contention of the Cotton Belt (St. Louis Southwestern Railway Co.) that it should be dismissed as a defendant since in fact it has not operated passenger trains into the Memphis Union Terminal since 1962. Attractive as this contention is, we finally have been forced to conclude that we should affirm Judge Brown's denial of the Cotton Belt's motion to dismiss. The Cotton Belt, as a one-fifth owner of the Memphis Union Station Co., has a present right to run trains into that station employing a line or lines of railroad so to do. Since that right will undoubtedly be affected by the outcome of this litigation, we believe the Cotton Belt is a proper party.

For the reasons set forth herein and in the memorandum decision of the District Judge (which we specifically affirm), we affirm the final judgment entered October 14, 1964, and the order amending same entered October 23, 1964.

APPENDIX E

Judgments of the United States Court of Appeals for the Sixth Circuit

Filed March 31, 1966

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
No. 16,466

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, ET AL, *Intervenor-Plaintiffs-Appellees,*

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL, *Defendants-Appellants.*

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4)

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16,467

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee*,

and

CITY OF MEMPHIS, TENNESSEE, ET AL., *Intervenor-Plaintiffs-Appellees*,

vs.

SOUTHERN RAILWAY COMPANY, *Defendant-Appellant*.

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16,468

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, ET AL., *Intervenor-Plaintiffs-Appellees,*

vs.

MISSOURI PACIFIC RAILROAD COMPANY, *Defendant-Appellant.*

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16,469

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, ET AL., *Intervenor-Plaintiffs-Appellees,*

vs.

MEMPHIS UNION STATION COMPANY, *Defendant-Appellant.*

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16,470

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, ET AL., *Intervenor-Plaintiffs-Appellees,*

vs.

UNION RAILWAY COMPANY, *Defendant-Appellant.*

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

APPENDIX F

Order Denying Petition for Rehearing and Correcting Opinion

Filed May 6, 1966

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

The petition for rehearing filed by defendants-appellants Louisville and Nashville Railroad Co. and Illinois Central Railroad Company, in appeal No. 16,466, having been fully considered, is hereby DENIED.

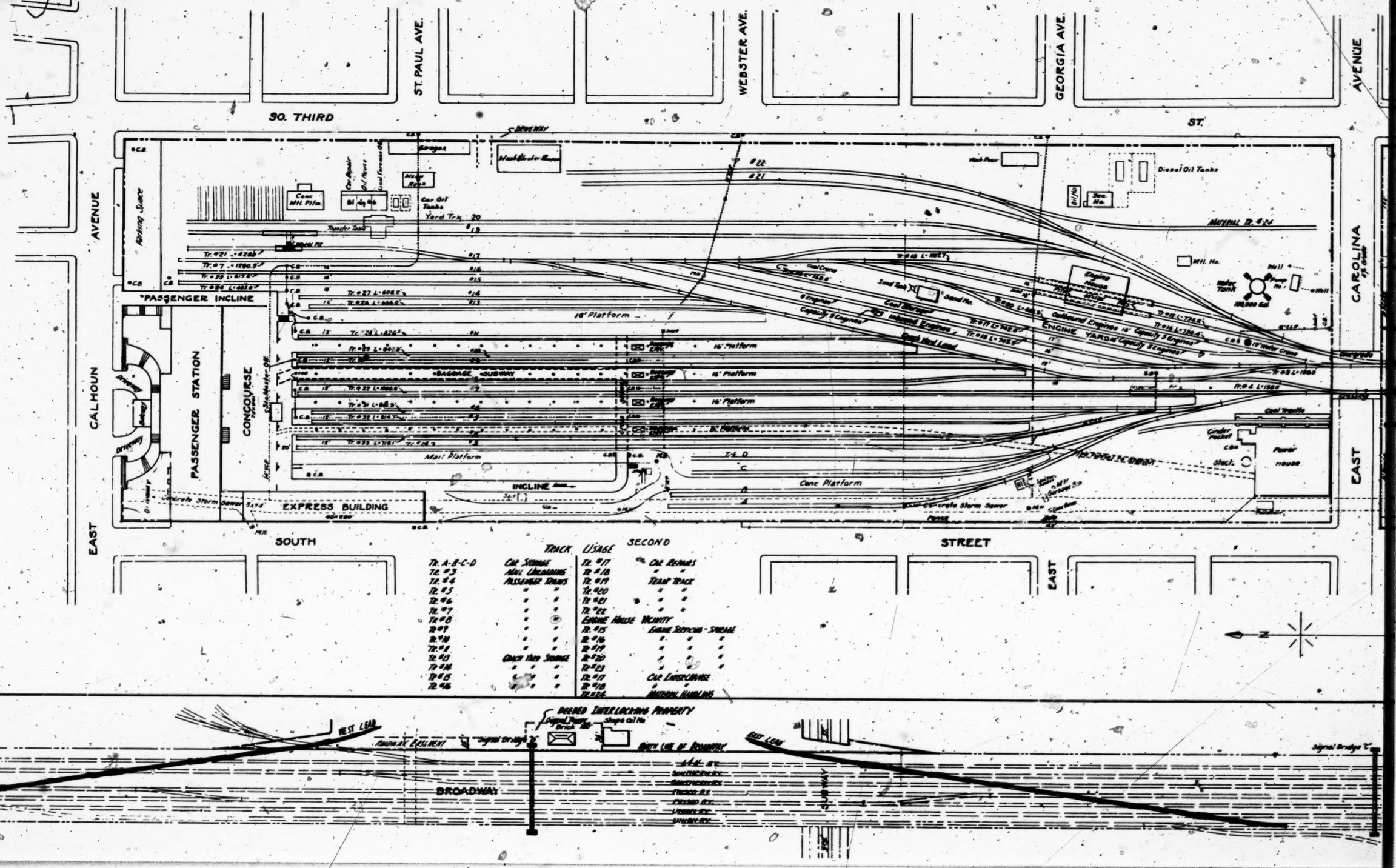
On petition filed by defendant-appellant St. Louis Southwestern Railway Company, in appeal No. 16,471, the court corrects its opinion to show 1952 as the date of discontinuance of its rail passenger service to the Memphis Union Station.

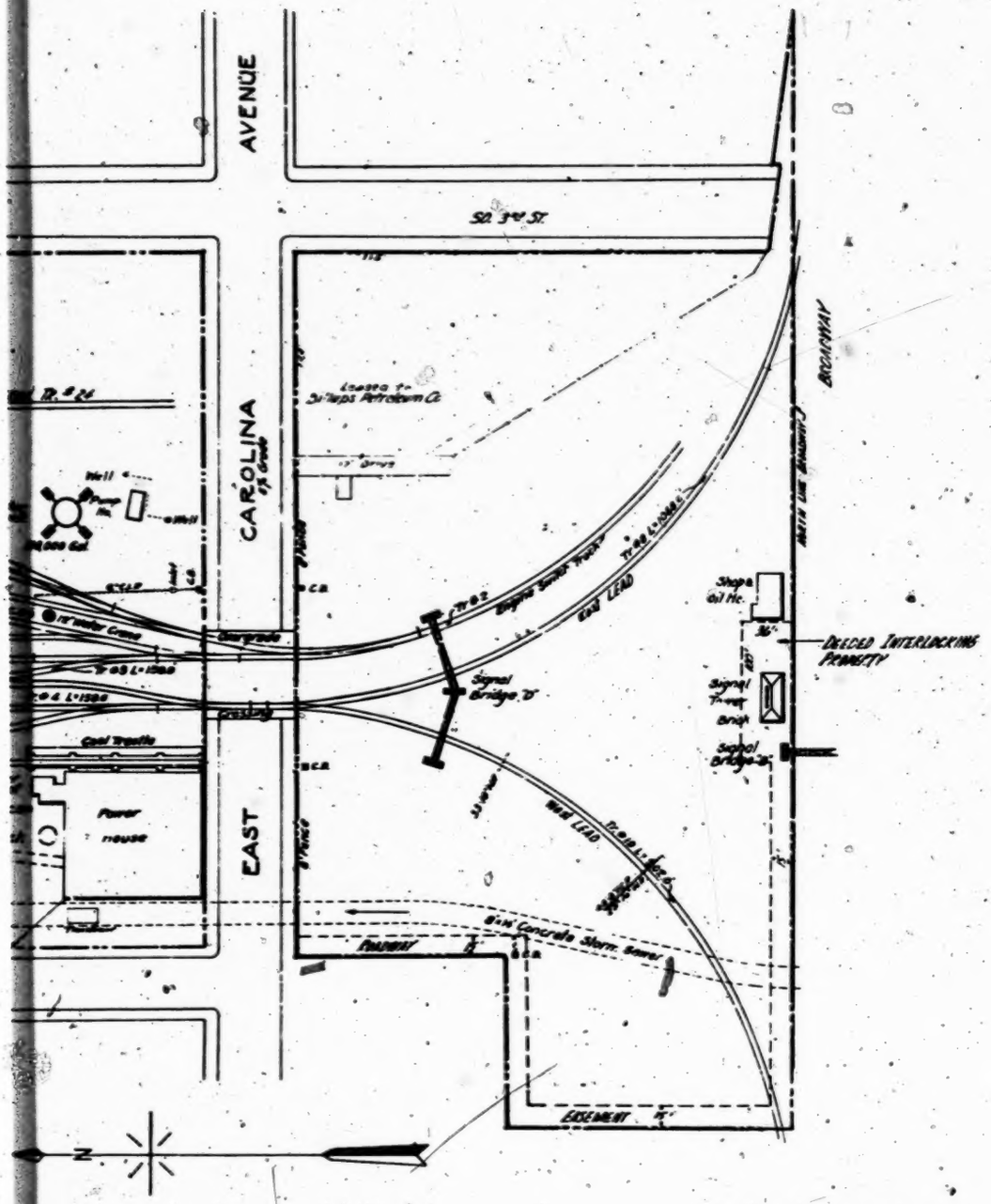
Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

(8611-6)

APPENDIX G


SO. THIRD
ST. PAUL AVE.
WEBSTER AVE.
GEORGIA AVE.
ST.
AVENUE
CAROLINA
CALHOUN AVENUE
EAST
SOUTH
STREET
EAST
PASSENGER STATION
CONCOURSE
"PASSENGER INCLINE
"BAGGAGE "SUBWAY
EXPRESS BUILDING
INCLINE
Mail Platform
18' Platform
16' Platform
15' Platform
Arriving Space
Coal Mil. Plfm.
Car Oil Tanks
Yard Trk. 20
Transfer Table
Diesel Oil Tanks
Material Tr. #24
Engine House
ENGINE YARD (Capacity 8 Engines)
Outbound Engines
Inbound Engines
Coal Wharf
Coal Trestle
Cinder Pocket
Power house
Stack
Cinder Track
Cone Platform
Sand House
Sand Bin
Coal Crane
Water Tank
Pump House
Well
Mill. No.
Oil No.
Store No.
Track Usage
Second
Tr. A-B-C-D Car Storage
Tr. #3 Mail Unloading
Tr. #4 Passenger Tracks
Tr. #5
Tr. #6
Tr. #7
Tr. #8
Tr. #9
Tr. #10
Tr. #11
Tr. #12 Coach Yard Storage
Tr. #13
Tr. #14
Tr. #15
Tr. #16
Tr. #17 Car Repairs
Tr. #18
Tr. #19 Team Track
Tr. #20
Tr. #21
Tr. #22
Engine House Vicinity
Tr. #23 Engine Servicing - Storage
Tr. #24
Tr. #25
Tr. #26
Tr. #27
Tr. #28 Car Interchange
Tr. #29
Tr. #30 Material Handling
DEED INTERLOCKING PROPERTY
Signal Tower Brick
Shop & Oil Ho
North Line of Property
Signal Bridge "A"
Signal Bridge "B"
WEST LEAD
EAST LEAD
BROADWAY
SUBWAY
Retaining Wall & Embankment
Concrete Storm Sewer
Fence


AVENUE
S2 3rd St.
CAROLINA
EAST
BROADWAY
Leased to Sinclair Refining Co.
Well
Power House
Coal Trestle
Signal Bridge 2
Signal Bridge 3
Signal Bridge 4
DERCO INTERLOCKING PLANT
Shops Oil Ho.
Power house
Main Line
Yard Lead
Main Lead
Yard Lead
Engine House Track
Engine House Track
Coal Trestle
Coal Trestle
Crossing
Crossing
Crossing